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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	2:09-CR-508-KJD (LRL)
)	
FRANCISCO JAVIER FRANCO)	
)	
Defendant.)	

**UNITED STATES' UNOPPOSED MOTION TO
 CONTINUE THE DATE TO RESPOND TO LOWELL
 WAYNE TOLIVER'S MOTION FOR RETURN OF PROPERTY**

The United States of America ("United States"), by and through Daniel G. Bogden, United States Attorney for the District of Nevada and Michael A. Humphreys, Assistant United States Attorney, respectfully moves this Court to grant an extension of time, until and including February 28, 2012, for the United States to file its response to Lowell Wayne Toliver's Motion To Return Property:

The Government's Opposition is currently due on January 29, 2012.¹ Lowell Wayne Toliver, proceeding *pro se*, consents to this motion. In this case, the defendant, Francisco Franco, was indicted on December 16, 2009, for, amongst other things, being a felon in possession of a firearm. On September 16, 2010, defendant Franco pled guilty to brandishing a firearm during a

¹Because January 29, 2012 falls on a Sunday, the Government's response would be due the next business day, January 30, 2012.

1 crime of violence. As a condition of that plea agreement, the defendant consented to the criminal
2 forfeiture of the firearm, to wit: a .357 magnum revolver, seized from him coincident to his arrest.
3 The United States learned through its own investigation that Lowell Wayne Toliver was the true
4 owner of that Smith & Wesson .357 revolver. The United States Attorney for the District of Nevada
5 formally notified Mr. Toliver about the gun and consistent with that notification, Mr. Toliver filed
6 his Motion for Return of Property on January 12, 2012.

7 Pursuant to that filing, this Court ordered the United States to file its opposition to Mr.
8 Toliver's motion by January 29, 2012. The parties are in the midst of negotiating a settlement of this
9 matter, and once executed and presented to this Court for ratification, the litigation will be complete,
10 vitiating the need for the Government to file a response to Mr. Toliver's motion. This matter should
11 be settled by February 28, 2012.

12 As noted above, Government counsel discussed the matter of a government continuance with
13 Lowell Wayne Toliver on January 30, 2012, and Mr. Toliver gave Government counsel authorization
14 to represent to this Court that he, (Mr. Toliver) consents to this motion.

15 This motion is not submitted solely for the purpose to delay or for any other improper
16 purpose.

1 WHEREFORE, , the United States moves this Court to grant its motion to extend the time
2 for the United States to file its Response To Lowell Wayne Toliver's Motion For Return of Property
3 for an additional 30 days, or until February 28, 2012.

4 DATED this 30th day of January, 2012.

5 Respectfully submitted,

6 DANIEL G. BOGDEN

7 United States Attorney

8
9 /s/Michael A. Humphreys
10 MICHAEL A. HUMPHREYS

11
12
13 IT IS SO ORDERED:

14 

15 UNITED STATES DISTRICT JUDGE

16 DATED: 1/31/12

PROOF OF SERVICE

I, Elizabeth Baechler-Warren, Forfeiture Support Associate Paralegal, certify that the following individuals were served with a copy of the foregoing on January 30, 2012, by the below identified method of service:

CM/ECF:

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/s/ Elizabeth Baechler-Warren
Elizabeth Baechler-Warren
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